

## **102 KAR 1:245. Rollovers and transfers of contributions to other plans.**

RELATES TO: KRS 161.220 -161.990, 26 U.S.C. 401(a), 402(c), 403(a), (b), 408, 408A, 414(p), 457(b)

STATUTORY AUTHORITY: KRS 161.310(1), 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the board of trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. KRS 161.716 requires the board of trustees to promulgate administrative regulations as are necessary to remove any conflicts with federal laws and to protect the interests of the members and survivors of the members of the retirement system. This administrative regulation establishes what constitutes eligible rollover distributions, eligible retirement plans, distributions, distributees, and direct rollovers for purposes of compliance with 26 U.S.C. 401(a).

Section 1. "Eligible rollover distribution" shall include any distribution of all or any portion of the balance to the credit of the distributee, except:

(1) A distribution that is one (1) of a series of substantially equal periodic payments made at least annually:

(a) For the life or life expectancy of the distributee and the distributee's designated beneficiary;

(b) The joint lives or joint life expectancy of the distributee and the distributee's designated beneficiary; or

(c) For a specified period of ten (10) years or more;

(2) Any distribution to the extent that the distribution shall be required pursuant to 26 U.S.C. 401(a)(9), except as provided in Section 2 of this administrative regulation;

(3) The portion of any distribution that is not includable in gross income; or

(4) Any other distribution that is reasonably expected to total less than \$200 during the year.

Section 2. (1) Effective January 1, 2002, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. This portion may be transferred:

(a) Only to:

1. An individual retirement account or annuity described in 26 U.S.C. 408(a) or (b);

2. A qualified defined contribution plan described in 26 U.S.C. 401(a);

3. On or after January 1, 2007, to a qualified defined benefit plan described in 26 U.S.C. 401(a); or

4. An annuity contract described in 26 U.S.C. 403(b); and

(b) To an account or plan provided for in paragraph (1)2. through 4. of this subsection that agrees to separately account for amounts so transferred, and earnings on those amounts, including separately accounting for the portion of the distribution:

1. That is includable in gross income; and

2. That is not so includable.

(2) Effective January 1, 2002, the eligible rollover distribution shall also include a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).

(3) "Eligible retirement plan" shall include any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in 26 U.S.C. 408(a);

(b) An individual retirement annuity described in 26 U.S.C. 408(b);

- (c) An annuity plan described in 26 U.S.C. 403(a);
  - (d) A qualified trust described in 26 U.S.C. 401(a);
  - (e) Effective January 1, 2002, an annuity contract described in 26 U.S.C. 403(b);
  - (f) Effective January 1, 2002, a plan eligible under 26 U.S.C. 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or
  - (g) Effective January 1, 2008, a Roth IRA described in 26 U.S.C. 408A.
- (4)(a) "Distributee" shall include an employee or former employee and the following:
1. The employee's or former employee's surviving spouse; and
  2. The employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in 26 U.S.C. 414(p).
- (b) Effective January 1, 2007, a "distributee" shall also include a nonspouse beneficiary who is a designated beneficiary as defined by 26 U.S.C. 401(a)(9)(E).
1. A nonspouse beneficiary shall rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution; and
  2. The account or annuity shall be treated as an "inherited" individual retirement account or annuity.
- (c) "Direct rollover" shall include a payment by the plan to the eligible retirement plan specified by the distributee.

Section 3. In accordance with section 401(a)(31) of the Internal Revenue Code, a distributee may elect, at any time and in the manner prescribed in this administrative regulation, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. (35 Ky.R. 1945; 2407; eff. 6-5-2009; 37 Ky.R. 1327; 1968; eff. 3-1-2011; Crt eff. 7-3-2019.)